

MT LEGISLATIVE HISTORY

Chapter 219 1974

Bill H 672 S _____

Original bill & hist. C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Jan 09 ✓ C

Hearing Date(s) Jan 31 ✓ C

Jan 15 ✓ C

Mar 06 ✓ C

Jan 16 ✓ C

_____ C

_____ C

_____ C

Date Out _____ C

_____ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

COMMITTEE ON

JUDICIARY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
641	1/17	1/24	1/24				1/24		
643	1/19	2/22	2/22				2/22		
672	1/26	1/31, 3/6	3/6				3/6		
682	1/30	2/22, 3/6	3/6				3/6		
711	2/23	2/20	2/20					2/20	
716	2/14	3/1	3/1				3/1		
717	1/25	2/19	2/19						2/19
719	2/15	2/27, 3/6	3/6						3/6
720	2/7	2/27, 3/6	3/6						3/6
721	2/15	2/27, 3/6	3/6						3/6
726	2/4	2/25, 2/27	2/27						2/27
742	1/23	2/25	2/25				2/25		
757	1/25	RE-REFERRED	1/26						
763	1/24	2/6, 2/7	2/7					2/7	
772	1/28	2/18	2/18				2/18		
773	1/24	2/18	2/18				2/18		
785	3/8	3/12	3/12					3/12	

(Use Separate Sheet for Senate, House Bills, and Resolutions)

Representative Lucas moved to amend on page 3, line 2 by striking on line 2 commencing with the word "However" and continuing through lines 3, 4 and 5 and AS AMENDED DO PASS.

Chairman Hall stated he would divide the motion.

Following discussion motion to amend failed with Representatives Yardley, Bell, Lucas, Towe and Warfield voting yes, Representatives Brown and Roberts abstained.

Chairman Hall ruled that without objection on page 10, line 1 be deleted as this is a duplicate line. No objection.

Representative Towe moved to amend on page 3, line 3 by adding after the word "agency" the word "or" and by striking after the material "collection agency" on line 4 the remainder of the paragraph.

Representative Greely stated he doesn't like this amendment.

Following discussion on this motion to amend carried with Representatives Hall, Baucus, Greely, Marbut and McKittrick voting no, Representative Brown and Roberts abstained.

Representative Hall suggested amending by adding a new section 23 reading: "Where there is more than one county in the judicial district and the county commissioners of more than one county in that district create small claims courts, the district judges may provide that the same judge of small claims court may preside over more than one of the small claims courts in the judicial district. In such cases the salary of the small claims court judge shall be prorated among the counties in which he presides."

Representative Marbut moved to accept as amendment the above language proposed by Chairman Hall. Motion to amend carried unanimously.

Motion AS AMENDED DO PASS carried unanimously.

HOUSE BILL 356 Chairman Hall stated that Representative Colberg wanted his bill brought out DO NOT PASS. Representative Yardley moved DO NOT PASS. Motion carried with Representative Towe voting no.

HOUSE BILL 672 Representative Marbut pointed out that on page 3, section 4 is provision regarding interest on security deposits. Representative Lucas raised question about necessity of this. Feels it ought to be a two way street, if pass, small claims act the guy has a great remedy and doesn't need this bill.

Representative Towe stated he disagreed with Representative Lucas, should encourage return of security deposits.

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE SENATE

January 31, 1974

The meeting was called to order by Senator McKeon, Chairman, at 11:00 a.m. in Room 415 of the Capitol Building.

The following bills were heard: SB 630
SB 643
SB 712
HB 672

SB No. 630--Witnesses appearing on the bill:

Senator Lynch, District 20, sponsor
James T. Mular, Montana Bar Examiners Common
Cause Committee
Ken Campbell, Butte, Insurance Adjuster
Ida Dixon, for Tom Dixon, Anaconda
Frank Waldbillig, Phillipsburg

Senator Lynch said this bill allows persons to be admitted to the bar by examination, without graduating from an accredited university. Mr. Mular said that the present bill is discriminatory to students who did not go to a university. Mr. Campbell said that although the Supreme Court was granted the authority of admission to the bar, the legislature could overrule it. Mrs. Dixon, and Mr. Waldbillig also spoke in support of the bill (Attachment 1).

SB No. 643--(Companion bills) Witnesses appearing on these bills:
HB No. 672

Tom Behan, Montana Student Lobbyist
John McKabe, legislative director
Greg Morgan, Boreman, lawyer
Representative R. Harper, Sponsor HB 672
Harold W. Siye, Landlord, Anaconda
Cliff Christian, Montana Ass'n of Realtors
Neil Haight, Montana Legal Services

Mr. Behan said the bill was supported by the health, environmental science, and intergovernmental relations departments, low-income groups, the Montana AFL-CIO, and the league of Women Voters, plus others. Mr. McKabe said the bill provides for habitability standards, security of deposits, lock-out provisions, clarification of rules between landlords and tenants, breach of contract remedies, a self-help clause, services for deliberate acts against landlords, substantial retaliation evictions, right of action against damages, and a hold-over tenancy clause. He said this a strong effort to balance the relationship between landlords and tenants.

Mr. Morgan, speaking from the viewpoint of the State Dept. of Planning and Economic Development, said that the rental structures are in poor repair, compared with private-owned homes. He said there was a crisis in the rental housing in Montana. The bill would control the bad elements between the tenant and landlord, and said that because of the high costs of owning a private home, more people are being forced to rent. The tenant is subservient to the landlord.

Representative Harper said that he would favor support of SB 643 over his bill HB672 based on the same measure.

Mr. Haight said this was a good bill in recodifying the present laws, by making the landlord comply materially to health standards. The bill also provides a good security deposit clause with mandatory identification of conditions of premises.

Mr. Zion said the present law doesn't provide standards that easily define their rights, and that the present law is based on medieval England laws, where the tenant buys the land temporarily.

Mr. Slye said this bill would make landlord/tenant lease mandatory.

Mr. Christian, speaking against the measure, said it was "punitive and confiscatory" to the landlord, and tended to lean towards the tenant over the landlords (Attachment 2). Mr. Popham objected specifically to Section 29, and Section 41, subsection 2.

Senator Gilfeather was assigned as chairman of a subcommittee, with Senator Drake, and Senator Hall as members.

SB NO. 712--Witnesses appearing on the bill:

Senator Carl, sponsor
Martin Whalen, Director, MSU Physical Plant
George Mitchell, Vice-President, U of M
Tom Behan, Montana Student Lobbyists

Mr. Wheeling said that parking tickets have doubled, and the present policy in fine collection is not effective. Within a 16-day period, they issued 700 tickets. He recommended the bill be amended so that the fines be set by the Board of Regents up to \$10 a quarter. Mr. Whalen also said that the \$1 fine is not enough to deter the student to paying his fines.

A petition was circulated at MSU, signed by members of the student, favoring the measure. (Attachment 3).

VISITOR'S REGISTER

NAME	REPRESENTING	Check One Support	Check One Oppose
W. P. Pabian			2
Nigel Hought	Mt. View Senior High	✓	
James H. Hought	Student Lobby	✓	

BILL NO.

VISITOR'S REGISTER

[illegible]

NAME

ADDRESS

BILL

DATE

WHOM DO YOU REPRESENT?

SUPPORT?

OPPOSE?

AMEND?

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HB 542--~~SENATOR GILFEATHER MOVED THIS BILL BE NOT CONCURRED IN, SECONDED BY SENATOR DRAKE. MOTION CARRIED UNANIMOUSLY.~~
SB 697, which was the revised version of HB 542 has already been passed.

HB 672--SENATOR GILFEATHER MOVED THIS BILL BE CONCURRED IN; SECONDED BY SENATOR HALL. MOTION CARRIED UNANIMOUSLY.

HB 682--Senator Harrison submitted amendments to the bill which would exempt medical doctors or other such licensed practitioners.

SENATOR MOVED THE AMENDMENTS BE CONCURRED IN (as per standing committee report); SECONDED BY SENATOR GILFEATHER. MOTION CARRIED UNANIMOUSLY.

SENATOR DRAKE MOVED THE BILL BE CONCURRED IN AS AMENDED; SECONDED BY SENATOR HARRISON. MOTION CARRIED UNANIMOUSLY.

HB 719 -- (Companion bills) Senator Gilfeather felt that in HB 721, an amendment should be made to change the burden of proof. Otherwise, he felt that the bill with the suggested amendments of Rep. Greely were fine.

Senator Turnage felt that these bills needed further study, and a lot more revisions, and that these right-to-know and right-of-participation bills should be worked in with Rep. Tom Towe's bill, The Montana Privacy Act, Hb 1024. Senator Gilfeather said that if this is the case, then these bills should be put into an interim study by way of a Senate Resolution. The Committee agreed.

SENATOR HARRISON MOVED THAT HB 719 BE NOT CONCURRED IN, UNDER THE STIPULATION THAT IT BE PLACED INTO AN INTERIM STUDY BY WAY OF A RESOLUTION. SENATOR DRAKE SECONDED. MOTION CARRIED.

SENATOR HARRISON MOVED THAT HB 720 BE NOT CONCURRED IN, UNDER THE STIPULATION THAT IT BE PLACED INTO AN INTERIM STUDY BY WAY OF A RESOLUTION. SENATOR DRAKE SECONDED. MOTION CARRIED.

SENATOR HARRISON MOVED THAT HB 721 BE NOT CONCURRED IN, UNDER THE STIPULATION THAT IT BE PLACED INTO AN INTERIM STUDY BY WAY OF A RESOLUTION. SENATOR DRAKE SECONDED. MOTION CARRIED.

HB 875--Senator McKeon felt that this bill would place all control into the hand of State government, and none in the local entities.

SENATOR ROMNEY MOVED THIS BILL BE CONCURRED IN, SECONDED BY SENATOR GILFEATHER. MOTION FAILED.

SENATOR BOYLAN MOVED THIS BILL BE NOT CONCURRED IN; SECONDED BY SENATOR HARRISON. MOTION CARRIED.

SENATE COMMITTEE Judiciary

Date March 6 HOUSE Bill No. 672 Time 11 a.m.

NAME	YES	NO
Luke McKeon	✓	
Pat Gilfeather	✓	
Paul Boylan	✓	
Mrs. Boots Hall	✓	
Miles Romney	✓	
Glenn Drake	✓	
Tom Harrison		✓
Jim Moore	at	
Jean Turnage	✓	

Gloria Wong
Secretary

William
Chairman

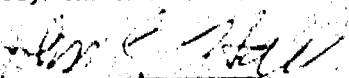
Motion: BE CONCURRED, made by Senator Gilfeather,
seconded by Senator Hall.

(Include enough information on motion—put with yellow copy of committee report.)

- HOUSE BILL 356 • Chairman Hall read enacting clause of this bill. Representative Towe stated he thought this bill had been made moot by passage of another bill.
- HOUSE BILL 228 Chairman Hall stated there would be no further hearing on this bill, the material is part of the uniform probate code. Will be shown as Held In Committee.
- HOUSE BILLS 390 & 672 These bills are somewhat comparable. Will set hearing for same time.
- HOUSE BILL 594 Will defer any decision on this bill until chief sponsor Representative Roberts is present.
- HOUSE BILL 612 This bill sponsored by Representative Harper pertaining to small claims was introduced too late for hearing last session. Also possibility Montana Bar Association Committee is coming up with a bill which includes small claims. Representative Bell will check on this.
- HOUSE BILL 616 Hearing will be set.
- HOUSE BILL 623 This bill pertains to legal aspect of condemnation. Page 4, Line 10 is only change in this bill. Representative Lucas moved to send bill to Fish & Game Committee. Representative Yardley seconded and motion carried.
- HOUSE BILL 625 Will schedule hearing.
- HOUSE BILL 536 Code of Ethics bill sponsored by Representative Holmes will be set for executive session to start with. Representative Lucas proposed that this bill so difficult and difficult that a special committee for study be appointed. Chairman Hall stated he would schedule this bill for executive session if no objection. No objection voiced.

All business being concluded the meeting adjourned.

JCH:pb


JOHN C. HALL, CHAIRMAN

JUDICIARY COMMITTEE

January 15, 1974

The fourth meeting of the Second Session of the House Judiciary Committee was called to order in Committee Room 436 of the Capitol Building at Helena, Montana on Tuesday, January 15, 1974 at 9:00 AM. Representative John C. Hall, Chairman, presided. All members were present.

Bills scheduled for hearing this date were House Bills Nos. 390, 672, 616 and 533 and they were taken in that order.

HOUSE BILL 390 Representative Kimble, chief sponsor, stated he had introduced this bill last session to help rectify certain problems for those who rent. He supports Representative R. Harper's House Bill No. 672 pertaining to the same problem as his bill also protects landlords' rights and is more reasonable. Both bills regulate actions between the landlord and the tenant. Security deposits tend to be a burden for both parties due to a landlord keeping a deposit unreasonably and the tenant who does more damage than the deposit covers.

HOUSE BILL 672 Representative Harper, chief sponsor, stated he didn't have much to add to what Representative Kimble had already said. This bill applies to mobile homes too. Urges a Do Pass on this bill. No other proponents. Opponent Cliff Christian representing Montana Realtors stated he was against an interest rate on the security deposit. No additional opponents. Following questions from committee members pertaining primarily to whether this bill should apply to ma and pa type rentals, whether tenant or landlord has recourse in the justice of the peace courts and the fact that the landlord should be allowed attorney's fees the hearing was closed.

HOUSE BILL 616 Representative Kimble, chief sponsor, requested a one week continuance on this bill as there is a question that this might be a duplication of federal law under intrastate commerce so is seriously considering amending or canceling bill pending what he can find out with additional time. No proponents. One opponent who stated he would reappear when bill is again heard. A motion by Representative Lucas to defer this bill was seconded by Representative Towle. Motion carried unanimously.

HOUSE BILL 533 Representative Hal Harper, chief sponsor, stated this bill guarantees a natural citizen the right to gamble. He read from portions of bill. The basic difference in this bill is that in other bills natural person has to go to licensed professional whereas in this bill a professional isn't necessary. Believes this bill could provide a realistic alternative. Feels this bill is workable, it is a tight bill and will legalize most of what is going on now and will reaffirm basic human rights. No other proponents. No opponents. Extensive question and discussion followed. Discussion centered primarily around definition of terms and whether this bill would not provide a good loophole for those who are searching for one. Hearing was then closed.

NAME

Robert J. Harper

BILL No.

672

ADDRESS

DATE

15, Jan 74

WHOM DO YOU REPRESENT?

SUPPORT?



OPPOSE?

AMEND?

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

NAME: Cliff Christian DATE: _____

ADDRESS: 2021 11th Ave. Helena

PHONE: 443-4032

REPRESENTING WHOM? Montana Association of Realtors

APPEARING ON WHICH PROPOSAL: H. B. 672

DO YOU: SUPPORT? _____ AMEND? X OR OPPOSE? X

COMMENTS: 1. Is there an effective date?

2. In a dispute, who will define normal wear and tear and reasonable use?

3. Does the application of public housing authority include HUD 235-236-22FD?

4. Can the 1% be deducted without damage?

5. What is a legal rate of interest?

6. What is reasonable negotiation & by whom?

7. No provision for interest to recipient for

loss of prior damages.

8. What about existing relationships?

9. How was the 1% derived?

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Representative Marbut moved to amend on page 3, by striking section 4 in its entirety and renumbering following sections. Motion to amend carried with Representatives Baucus and McKittrick voting no.

HOUSE BILL 612 Committee reverted to this bill at request of Chairman Hall who stated that without objection that included in amendment making a new section 23 should be the renumbering of present section 23 to section 24. No objection.

HOUSE BILL 672 Representative Bell stated that on page 4 in section 7 regarding attorney's fees should make it a two way street. Chairman Hall stated that if body wishes to make it clear he would suggest amending on page 4, line 12 after the word "deducted" by deleting the material "plus costs and reasonable attorney's fees" and inserting in lieu thereof "the attorney's fees may be awarded the prevailing party at the discretion of the court".

Representative Bell moved to amend as suggested by Chairman Hall. Motion to amend carried.

Representative Lucas moved to delete all of lines 17, 18 and 19 on page 1 with the exception of the word "premises" and stated this interferes with parties right to contract. Representative Marbut pointed out that line 20, subsection 2 language would also come out.

Chairman Hall stated he would treat deletion of subsection 2 and renumber the following subsections as part of amendment.

Motion to amend carried with Representatives Baucus, Baeth, Greely, McKittrick and Towe voting no.

Representative Towe moved DO PASS AS AMENDED. Motion carried with a roll call vote with Representatives Yardley, Bell, Lucas and Warfield voting no. Representatives Roberts and Brown absent.

Chairman Hall stated he wanted to start in on the Probate Code. There are several things the committee could pass on, will work until 5:30 PM today.

Chairman Hall stated that he had requested proposed amenders and repealer sections on bill to be worked out by University of Montana Law School. They have come through and a copy has been provided each committee member. Suggested the committee take these home and look at them. Would like to consider attorney's fees and material on joint tenancies tonight.

Attorney's fees provision is on page 128 in the yellow copy of House Bill 557. The statutes of Montana presently provide for administrator or executor, sets fee at percentage of estate and down to two percent if estate over \$20,000. Attorney's fee is set by court as to what it will allow but never before set by statute. Have provided in this bill that personal representative would receive a compensation of three percent on first \$40,000

"3-3307. Enforcement of chapter — hearings. (1) *The department, upon its own motion may, or upon verified complaint against any dealer or any person, firm, exchange, association, or corporation assuming or attempting to act as such, shall make all investigations it considers necessary. The department shall have at all times free and unimpeded access to all buildings, yards, warehouses, storage, and transportation or any other facilities or places in which any produce is kept, stored, handled, or transported. If the department, upon investigation, believes that a dealer is not acting in accordance with this chapter, or if a verified complaint is filed against any dealer, the department shall have personal service made on the dealer or shall mail by registered mail a complaint or a copy of the verified complaint against the dealer. If dealer fails to make informal adjustment or settlement of the charges, to the satisfaction of the department, the department shall give notice of the time and place of a formal hearing. Notice of the hearing shall be given at least twenty (20) days before the hearing and the hearing shall be held in the city or town in which the transaction complained of is alleged to have occurred.*

(2) *At the hearing, copies of records, inspection certificates, certified reports, and all papers on file in the office of the department are prima facie evidence of the matters contained in them.*

(3) *After the hearing, the department shall dismiss the charges, suspend the license of the dealer for a specified period, revoke the licenses, or make any other appropriate order considered just and proper. The order shall specify its effective date and any order other than one suspending or revoking a license shall automatically suspend the license until the order is complied with."*

Section 166. Section 84-3410, R.C.M. 1947, is renumbered section 3-3308, and is amended to read as follows:

"3-3308. Effect of appeal to district court. *If the revocation of the license of a produce dealer is appealed to a district court, the license remains in force until the final determination by the court. A license may not be refused during the time or on account of the pendency of any review proceedings."*

Section 167. Section 84-3413, R.C.M. 1947, is renumbered section 3-3309, and is amended to read as follows:

"3-3309. Rules for enforcement of chapter. *The department shall adopt rules for carrying out and enforcing this chapter."*

Section 168. Section 84-3414, R.C.M. 1947, is renumbered section 3-3310, and is amended to read as follows:

"3-3310. Cooperation with similar agencies. *The department shall cooperate with the United States department of agriculture and with other federal authorities, and with the state and municipal authorities of this and other states, and shall perform those other acts necessary in carrying out this chapter."*

Section 169. Section 84-3415, R.C.M. 1947, is renumbered section 3-3311, and is amended to read as follows:

"3-3311. Disposition of license fees. *All license fees received by the department under this chapter shall be paid into the state treasury and deposited in a revolving fund to be spent by the department upon approval of the state treasurer. All moneys so deposited shall be held for the department to use in carrying out this chapter."*

Section 170. Section 84-3416, R.C.M. 1947, is renumbered section 3-3312, and is amended to read as follows:

"3-3312. Violation a misdemeanor — penalty. *A person who violates this act, fails to comply with rules adopted under this chapter, or fails to obey an order of the department made under this chapter is guilty of a misdemeanor and shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500), or imprisoned in the county jail for not more than six (6) months, or both fined and imprisoned. The fine shall be paid into the state treasury and deposited as provided in section 3-3411."*

Section 171. Section 90-203, R.C.M. 1947, is renumbered section 3-3404, and is amended to read as follows:

"3-3404. Designation of grade of bulk apples. *Apples shipped or sold in bulk shall have two cards at least ten by twelve inches (10" x 12") in size attached to the doors of the car, or on each side of truck in which they are moved. The cards shall designate the grade of the apples contained in the car or truck as specified in section 3-3402 and shall be in legible printed letters at least two inches in height."*

Section 172. The codifier of the Revised Codes of Montana shall transfer sections 90-201, 90-202, 90-203 through 90-206 to Title 3, chapter 34, R.C.M. 1947, and shall renumber those sections as sections 3-3402, 3-3403, 3-3404, 3-3405 through 3-3407, respectively.

Section 173. Sections 3-101 through 3-106, 3-108, 3-109, 3-109.1, 3-110, 3-110.1, 3-111, 3-112, 3-115, 3-118, 3-120 through 3-122, 3-204, 3-304, 3-401 through 3-420, 3-501 through 3-511, 3-601 through 3-610, 3-701, 3-812, 3-815, 3-901 through 3-906, 3-1101, 3-1102, 3-1105, 3-1208, 3-1217, 3-1502 through 3-1509, 3-1601 through 3-1603, 3-1712, 3-1713, 3-1733, 3-1910, 3-1911, 3-2101 through 3-2109, 3-2901, 3-2903, 3-2905, 3-2907, 3-2910, 3-2912, 3-2914, 3-2918, 14-418, 80-501 through 80-505, 82-804.1, 82-804.4, 82-2901 through 82-2903, 82A-302, 82A-303, 82A-305, 84-3401, 84-3409, 84-3411, and 84-3412 are repealed.

Approved March 15, 1974

CHAPTER NO. 219

AN ACT ESTABLISHING THE RIGHTS AND OBLIGATIONS OF LANDLORDS AND TENANTS IN SECURITY DEPOSITS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new section to be numbered 42-301, R.C.M. 1947, which reads as follows:

42-301. **Definitions.** As used in this chapter:

(1) "Damage" means any and all tangible loss, injury or deterioration of a leasehold premises caused by the willful or accidental acts of the tenant occupying same or by the tenant's family, licensees or invitees, as well as any and all tangible loss, injury or deterioration resulting from the tenant's omissions or failure to perform any duty imposed upon the tenant by law with respect to the leasehold.

(2) "Leasehold premises" means the premises occupied by the tenant together with all common areas, recreational facilities, parking areas and storage facilities to which the tenant has access as well as all personal property owned or controlled by the landlord the use of which is permitted to the tenant.

(3) "Security deposit" means value given, in money or its equivalent, to secure the payment of rent by the tenant under a leasehold agreement, or to secure payment for damage to the leasehold premises. If a leasehold agreement or an agreement incident thereto requires the tenant or prospective tenant to provide or maintain in effect any deposit to the landlord for part or all of the term of the leasehold agreement, the deposit shall be presumed to be a security deposit.

Section 2. There is a new section to be numbered 42-302, R.C.M. 1947, which reads as follows:

42-302. **Application.** This chapter applies to all rentals of dwellings, including mobile homes but excluding property of public housing authorities.

Section 3. There is a new section to be numbered 42-303, R.C.M. 1947, which reads as follows:

42-303. **Security deposit — deductions authorized.** Any landlord renting property covered by this section may deduct from the security deposit a sum equal to the damage alleged to have been caused by the tenant together with a sum equal to the unpaid rent owing to the landlord at the time of such deduction and a sum for administrative and custodial expenses, which expenses shall not exceed one percent (1%) of the security deposit. No person may deduct or withhold from the security deposit any amount for purposes other than those set forth in this subsection.

Section 4. There is a new section to be numbered 42-304, R.C.M. 1947, which reads as follows:

42-304. **List of damages to leased premises.** Every landlord, within thirty (30) days subsequent to the termination of a tenancy or within thirty (30) days subsequent to a surrender and acceptance of the leasehold premises, whichever occurs first, shall provide the departing tenant with a verified written list of any damage to the leasehold premises which the landlord alleges is the responsibility of the tenant. Delivery of such list shall be accompanied by payment of the difference, if any, between the security deposit and the permitted charges set forth in section 3 [42-303].

Section 5. There is a new section to be numbered 42-305, R.C.M. 1947, which reads as follows:

42-305. **Failure to provide list of damages.** Any landlord who fails

to provide the departing tenant with a verified written list of damage as required by section 4 [42-304] shall forfeit all rights to withhold any portion of the security deposit.

Section 6. There is a new section to be numbered 42-306, R.C.M. 1947, which reads as follows:

42-306. **Wrongfully withholding security deposit — action for.** Any person who wrongfully withholds a residential property security deposit, or any portion thereof, shall be liable in damages to the tenant in a civil action for an amount equal to double the sum determined to have been wrongfully withheld or deducted, the attorney's fees may be awarded the prevailing party at the discretion of the court. The burden of proof of damages caused by the tenant to the leasehold premises shall be on the landlord. No action may be maintained by a tenant for any amount wrongfully withheld or deducted prior to:

(1) the tenant's receipt, from the landlord or his agent, of a written denial of the sum alleged to be wrongfully detained;

(2) the expiration of a thirty (30) day period after the termination of a tenancy; or

(3) the expiration of a thirty (30) day period after surrender and acceptance of the leasehold premises, whichever occurs first.

Section 7. There is a new section to be numbered 42-307, R.C.M. 1947, which reads as follows:

42-307. **Failure of tenant to furnish new address.** Failure by the departing tenant to provide the landlord with his new address in writing upon termination of the tenancy or upon surrender and acceptance of the leasehold premises, whichever occurs first, shall relieve the landlord from double liability as imposed by section 6 [42-306]. Such failure shall not, however, bar the tenant from recovering the actual amount owing to him by the landlord.

Section 8. There is a new section to be numbered 42-308, R.C.M. 1947, which reads as follows:

42-308. **Condition of premises at beginning of lease — verified list — failure to furnish list to tenant.** (1) Any person engaged in the rental of property for residential purposes who requires a security deposit shall furnish to each prospective tenant, prior to execution of a lease or creation of a tenancy, a separate written statement as to the present condition of the premises intended to be let, as well as a copy of the verified written list of damage, if any, provided to the tenant of the immediately preceding leasehold agreement for the premises in question.

(2) Each written statement of the present condition of a premises intended to be let shall contain, at least, the following:

(a) a clear and concise statement of the present condition of the premises known to the landlord or his agent or which should have been known upon reasonable inspection;

(b) if the premises have never previously been let, a statement indicating such fact;

(c) if any damage to the leasehold premises resulting from the immediately preceding leasehold agreement has not been restored, a statement indicating such fact and setting forth such unrestored damage; and

(d) the signature of the landlord or his agent.

(3) Any person engaged in the rental of property for residential purposes who fails to furnish a prospective tenant, prior to the execution of the lease or creation of the tenancy, with a separate written statement of the present condition of the premises intended to be let and, if any, a verified written list of damage provided to the tenant of the immediately preceding leasehold agreement, shall be barred from recovering any sum for damage to the leasehold premises unless he can establish by clear and convincing evidence that the damage occurred during the tenancy in question and was caused by the tenant occupying the leasehold premises or the tenant's family, licensees or invitees.

Section 9. There is a new section to be numbered 42-309, R.C.M. 1947, which reads as follows:

42-309. **Waivers and contrary provisions invalid.** Any provision of a leasehold agreement, either oral or written, that is contrary to this section shall be invalid. Any attempted waiver of this section by the tenant shall be invalid.

Approved March 15, 1974

CHAPTER NO. 220

AN ACT TO CREATE A COMMISSION WHICH MEETS FEDERAL REQUIREMENTS TO ADMINISTER STATE PLANS UNDER FEDERAL HIGHER EDUCATION PROGRAMS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new section to be numbered 75-9001, R.C.M. 1947, which reads as follows:

75-9001. **Purpose.** It is the purpose of this act to promote the education and welfare of the people of this state by creating an agency, which meets the requirements of federal law, to cooperate with the federal government in the establishment and administration of programs for higher education provided for by the congress of the United States.

Section 2. There is a new section to be numbered 75-9002, R.C.M. 1947, which reads as follows:

75-9002. **Definitions.** Unless the context requires otherwise, in this act:

(1) "Commission" means the commission on federal higher education programs provided for in section 82A-512.

Section 3. There is a new section to be numbered 82A-512, R.C.M. 1947, which reads as follows:

82A-512. **Commission on federal higher education programs — creation — appointment — terms.** (1) There is a commission on federal higher education programs.

(2) The commission consists of:

(a) ex officio, the appointed members of the board of regents of higher education; and

(b) a representative of each accredited private college or university in this state appointed by the governor from the board of trustees of each private college or university. Membership on the commission by these representatives is contingent upon their continued status as trustees.

(3) The non-ex officio members shall serve for terms as provided in section 82A-112(2)(a).

(4) The chairman of the board of regents of higher education is chairman of the commission.

(5) The commissioner of higher education is the administrative officer of the commission.

(6) The commission is allocated to the board of regents of higher education for administrative purposes only as provided in section 82A-108.

(7) The commission members are entitled to compensation as provided in section 82A-112(7).

Section 4. There is a new section to be numbered 75-9003, R.C.M. 1947, which reads as follows:

75-9003. **Duties.** The commission shall:

(1) administer state plans under Title I of the federal Higher Education Facilities Act of 1963, P.L. 88-204, as amended by P.L. 89-329;

(2) administer state plans under Title VI of the federal Higher Education Act of 1965, P.L. 89-329;

(3) administer state plans under Title I of the federal Higher Education Act of 1965; and

(4) administer other state plans under federal funding and grant programs which may be assigned by the governor or the legislature except those pertaining to the duties of the superintendent of public instruction and the board of public education.

Section 5. This act shall be effective upon passage and approval.

Approved March 15, 1974

CHAPTER NO. 221

AN ACT ESTABLISHING A TEMPORARY COMMISSION ON LOCAL